91-78

Supreme Court, U.S.
FILED
JUL 11 1991
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

MARY A. VOGEL - PETITIONER

VS.

ANTHONY FRANK - RESPONDENT
Postmaster General of the United States

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

A. Should the United States Supreme Court deny a person their right to be heard under unusual circumstances and be realistic when a crisis has to be faced, and there is an act of God involved? Because of continued denials and accusations that the Complaint was not timely filed? When I was removed from the U S Postal Service May 9, 1986, the U S Postal Service denied my EEO Complaint, I was denied by an Arbitrator hired by the U S Postal Service, since May of 1987, for over a year the U S Postal Service contended that the EEO Complaint was untimely filed. The U S Postal Service continues to contend that it is past the statutes of limitations even on my Reprisal however; they were wrong there also. Which out weighs the other?

B. Why is the Postal Service so hard hearted, callus, crude, uncaring, for an injured employee that it refuses to accommodate an employee injured on the job and denies that it

even happened on the job, then loads them down even more because they do not want injured employees in the Postal Service and want young blood?

C. How long is the Government going to allow the U S Postal Service to ignore and go against Health and Safety Rules and Regulations that are supposed to protect the Postal Employees?

D. What chances does a Female Postal Employee have when the Arbitrator is picked and paid by the U S Postal Service that was prejudiced concerning women, that it appeared that I had good union representation and should have had written notice for light duty, when my Union Representative was telling me, that it was more important to get my job back first, then I could ask for light duty?

E. Why couldn't the U S Postal Service have been more accommodating to Vogel when she had Veterans Preference and was injured on the job?

F. Why is the U S Postal Service allowed to lose your personnel folder when you ask to see it and destroy Federal Employees Compensation papers when you ask for them?

G. Why should my right for re-employment be taken away because of having to fight a technicality with Federal Employees Compensation Programs, that they refuse to accept my claim and have destroyed part of my records?

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| A. I TOOK MY EEO COMPLAINT DIRECTLY INTO FEDERAL COURT TO BE HEARD BY A TRIAL BY JURY. I DID NOT KNOW THAT SO MUCH TIME WAS SPENT ON DENIALS, AND TRYING TO KEEP CASES OUT OF COURT BY STATUTES OF LIMITATIONS. MY CASE SHOULD BE HEARD. | |
| B. THIS IS AN ONGOING ACT OF DISCRIMINATION, THERE IS A REPRISAL PENDING AT THIS TIME AND THERE HAS BEEN REPEATED REPRISALS THROUGHT MY CAREER AS A FEMALE POSTAL EMPLOYEE. | |
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### RULES AND STATUTES

Title VII of the Act of Congress, known as the Civil Rights Act of 1964, 2000(e) et seq. to secure protection of and to redress, deprivation of rights secured by 42 U.S.C. 2000, et seq. providing for injunctive and other relief against sex discimination in employment. Section 717 of Title VII prohibits Federal Government discrimination based upon sex.

29 U.S.C. Section 621, et seq., known as the Age Discrimination in Employment Act of 1967, providing for injunctive, declaratory and other relief against age discrimination in Employment. Section 15(a) of the A,D,E,A,29U.S.C.Section 633(a) specifically authorizes suits by Federal Government Employees. This suit is also brought pursuant to 29 U.S.C. Section 791, 793, 794.

Rehabilitation Act of 1973.

Ohio Revised Code 2305.19 Saving Statute.

29 CFR 1613.704 requires that Agency, U S Postal Service to accommodate limitations or disability.

29 CFR Section 1613.261 and 1613.262 accordingly a Reprisal Complaint which rose out of the same basis, according to 29 CFR Section 1613 Joint Processing and Consolidation of Complaint Sub Section A, two or more complaints with similar allegations may be approved with written permission to the EEOC at their discretion.

Occupational Safety and Health Adimistration (OSHA) was created by Congress in 1970 as part of the nation's first comprehensive federal system to protect workers.

28 U.S.C. §2403(a) may be applicable.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Mary A Vogel respectfully prays that a Writ of Certiorari to review judgments and opinions from the United States Court of Appeals for the Sixth Circuit, Cincinnati, Ohio 452-3988 and the United States District Court, Toledo, Ohio 43624

1.

OPINION BELOW

Orders and Opinions of the United States Court of Appeals for the Sixth Circuit attached as Appendix A.

Rehearing Entries are attached as Appendix B.

II.

JURISDICTION

The Opinions of the United States Court

of Appeals for the Sixth Circuit was filed April 12, 1991 concluded that the District Court lacked subject matter Jurisdiction to consider Vogel's Complaint because it was filed beyond the applicable Statute of Limitations Period. See 42 U.S.C.A. § 2000e-16 (c) (West 1981). Moreover, neither equitable tolling nor the state savings statute renders Vogel's complaint timely. See Irwin v. Veterans Administration, III S. St. 453, 457 (1900), and Davis v. Smith's Transfer, Inc., 841 Fnd 139, 140(6th Cir. 1988), respectively.

Accordingly, the district court's judgment is affirmed for the reason stated in the district courts memorandum and order filed October 18, 1990. Rule 9(b) (5), Rules of the Sixth Circuit.

## III.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United Stes Constitution Provides:

> that no person shall "be deprived of life, liberty, or property, without due process of law," and on the 14th Amendment, which prohibits state governments from encroaching on the individuals rights without due process of law. Due process protects you from having your basic rights violated by government officials at any level federal, state, or local. In order for a government to exercise its power over you, due process requires that you be given (1) notice of the proceedings, (2) an opportunity to prepare for the proceedings, (3) the chance to be heard both in presenting your own claim and in combating the governmen-

t's claim, and (4) a fair hearing before an impartial tribunal. Due process also refers to the governments power to make laws so long as it observes the following criteria: (1) The law in question must have a proper purpose. (2) Constitutional rights cannot be violated. (3) The means used must actually be related to the desired end. (4) A criminal law must be so clear that a person will know what is required of him or her. If the foregoing criteria are not met, the law is unconstitutional. For example, if a law is so vague that persons of common intelligence must guess at its meaning, the law violates due process. The true test of due process is reasonableness: Is the government exercising it's power in a reasonable manner to accomplish an objective within the scope of it's authority? All persons under authority of the United States law are protected by due process, including indians, aliens residents of the territories, members

of the armed forces, students, and prisoners. The government may treat different classes of people differently as long as there is a rational or compelling reason for this treatment - but arbitrary discrimination violates due process. For example, a provision of the Social Security Act was found unconstitutional because it unfairly denied insurance benefits to fathers whose wives had died. The Supreme Court ruled that the different treatment of surviving fathers and surviving mothers violated the guarantee of due process. On the other hand, a state does not violate due process by charging out-of-state students higher tuition at the state university than residents because out-of-state families are not local taxpayers. The government may restrict individual rights but in order not to violate the constitutional guarantee of due process such as traffic laws and laws regulating the sale of liquor, must be for a public purpose and apply to everyone. But a law re-

quiring children to attend only public schools would be unconstitutional because it would interfere with the freedom of parents to supervise the education of their children. The Supreme Court has ruled that municipally owned utilities cannot cut off service without giving the customer due process - that is, an opportunity to challenge the action. (This protection does not apply to customers of private utilities, however.)

IV.

STATEMENT OF FACTS

Late Thursday evening, March 28, 1991 my four and one half month old Schnauzer puppy named Schottzie became ill. My daughter Jane, her husband, and their two Schnauzers arrived from Newark, Delaware for Easter at 2:00 A M, Saturday morning. Schottzie was not feeling well, so I left her in her cage. Schottzie did not play, she just sat and watched Bandit and Maggie play. Early Sunday morning, Jane awoke me to tell me that Schottzie was all wet from drooling and very limp. We took Schottzie to the Veterinarian on Easter Sunday morning. The doctor said Schottzie was poisoned. Schottzie became worse, we took her back to the doctor again that evening. Everyday, sometimes twice a day I took her to the doctor, until Tuesday, April 23, 1991, Judy Lahr saw us in the Veterinarians office, told me, "Mary Ann as sick as that dog is, she shou-

ld be in the Ohio State University Veterinarian Hospital in Columbus, Ohio. I took Schottzie as an emergency patient. Schottzie was very, very critical with a white blood cell count of 136,000 and was about to go into a coma. Normal white blood cell count is 12,000. They told me there was no hope for Schottzie. I called the Dominican Priests in New Jersey, and had a ST Jude Perpetual Novena said for Schottzie. ST Jude is the Patron Saint of Impossible Cases. My daughter Jane prayed to ST Francis, Patron Saint of animals. I also prayed to ST Francis.

Schottzie was given a blood transfusion immediately, blood work was done, the following morning Exploratory Surgery was performed, which revealed that Schottzie had a shunt that was bypassing the blood from going through the liver like it should, that it was a congenital disorder, that it wasn't poisoning at all. A week later Schottzie was operated on again and one half to

three quarters of the shunt was tied off. It was the biggest shunt they had seen, t-here was a risk of Schottzie not surviving the surgery to tie it off completely. Sch-ottzie remained in critical condition in intensive care, because her white blood c-ell count was still very high. There was no prognosis of her recovering. Through o-ur prayers, perseverence, tender loving c-are, and the expert care received at Ohio State University Veterinarian Hospital, S-chottzie is now a normal, healthy, happy, playful, miracle puppy and is a celebrity at O S U Vets Hospital, and is loved by t-he entire staff. I drive to Columbus twice a week now to have blood work done on Sch-ottzie, this is 280 miles a week. Schottz-ie seems to have a Neutrophilia (white bl-ood cells) which is not associated with f-ever or illness, which is being researched by DR Janet L Peterson at O S U Vet Hospit-al in Columbus OH, Philadelphia, PA, and Washington, D C, to determine if it could

be hereditary. Schottzie came home a month ago, only weighed 4 lbs 4 ozs, just skin and bones. She now weighs 10 lbs. She is still a lot of care and I have her on a schedule, so all the good things that have been done for her will not be undone.

Schottzie has been my main priority, I have placed her above everything else, she is considered family. We all love her very much. I have not had a minuet to myself because of constant care, with feedings every four hours with a syringe, liquifying foods in a blender, medicine through a syringe and pills pushed down her throat, constant cleaning up of vomit and diarrehea, taking her out to do her job making sure she was shielded in my warm winter coat from the rain, snow, cold, and the wind. When Schottzie was in the hospital I went down everyday (980 miles a week) forced fed her, petted her, took her toys, and played with her. There was still no hope. I took a cup of liquified lettuce down to her to boost

her appetite, with the doctors permission. She seemed to get better. I was able to b-ring Schottzie home May 28, 1991. Schottz-ie was still constant care. I had to force feed her, give her medicine, take her out to do her job, keep track of how much she ate, how her bowel movements were. Schott-zies white blood cell count kept going up and down.

During the time my little four and one half month old puppy was so ill, on April 15, 1991, I received an Order from the Uni-ted States Court of Appeals for the Sixth Circuit, that was filed April 12, 1991, th-at the District Court Judgment was affirmed for the reason stated in the District Cour-ts Memorandum and Order filed October 18, 1990. There was no consideration shown on Vogel's brief.

Vogel filed a Motion for Reconsidera-tion on April 30, 1991. (See attached as i-ncorporated herein by reference)

United States Court of Appeals, Sixth

Circuit sent a letter dated May 1, 1991. (See attached as incorporated herein by reference) that my petition was returned unfiled, because it was untimely submitted. I am not an attorney, I do not have access to Federal Rules as readily as an attorney would and under the circumstances, time had no meaning, my mind was only on saving my little Schottzie's life.

This is an Act of God, there has been a miracle performed in Schottzie's case. I have never been a lucky person, I have always lived a very difficult life, but when I receive gifts such as this, I receive them abundantly. There has been other miracles in my life. I will name two. The day I took my Civil Service Exam, I put a Novena into ST Jude, Feast Day of ST Anne, in the mail-slot at the Marion OH Post Office where the Exam was held. The day the Novena ended I received in my mail slot a grade of 94.1 which included a 10 point veterans Preference. I prayed for my brother, Phillip

H Gottfried to come back from World War 11, no matter what, when his letters came back. He came back, what Crile Hospital described as one of their most pitiful cases, a walking dead man. Phillip volunteered to help build the Burma Road and became a Japanese Prisoner of War, his legs were full of shrapnal, red hot pocker marks on his back where he was tortured, a skeleton, white hair, no color in his eyes, had to be fed, had to be sat down, laid down. It was a miracle that Phillip came back. It was a miracle that Phillip was able after shock treatments and all the treatments that were given to him at the Veterans Administration Hospital, that Phillip was able to remember his mother, father, family, and friends. Everything I have ever received has been a gift of God. In God We Trust.

I am a Citizen of the United States, I have lived in Upper Sandusky all my life.It is the only city in Wyandot County has a population of 5,906. Wyandot County was the

last home in Ohio for the Wyandot Indians, who inhabited the area from the 1700's to 1843. The Wyandots were primarily farmers not hunters or warriors. My Great, Great Grandmother Nancy Williams, was an Indian Princess, who married George Washington Mc Farland, a prominent minister at Burks's C-hurch, who died at the age of 30. Nancy Mc Farland then married a diplomat from Washi-ngton, D C and became Nancy Hanks. There w-ere three Williams brothers that served in the Civil War, one was a General. My mothe-rs Uncle Wendall Wilke ran for President of the United States. My husband's grandparen-ts and my grandparents and our great grand-parents were prominent and pioneered Upper Sandusky. They came from Baden, Baden, Ge-rmany. My father ran my Grandfather Gottfr-ied's hardware store, worked on their farm-'s, and studied to be a doctor. My father-in-law was in World War 1 and was head of the Draft Board in World War 11, his only child, my husband enlisted in the army air

force when he was 17. He didn't want it to be said that his father kept him out of the service. My husband was a postal employee. Just 7 months before he died he received a rural route by a presidential appointment. I tried for his rural route but was unsuccessful, because the Postmaster, Assistant Postmaster, and the men at the local post office felt they should have it, that it was a promotion for them, and that it was no job for a woman, they fought me through the local attorney's. Allen Newel's father went to ATTY William Hunter. Allen Newel received the rural route. ATTY Hunter resented me from getting into the post office and has caused me untold trouble. The resentment of the male employees in Upper Sandusky Post Office never ceased from my first step in the Upper Sandusky Post Office and my last step out the door, there was continued harrassment and they were going to make me pay for being the first women in the Upper Sandusky Post Office. It was known all over

Wyandot County and the surrounding Counties because they openly bragged about what they were doing to the Woman Mailcarrier. S P O Steve Cheney openly bragged about firing Mary Ann Vogel because she could not do the job for which she was hired. His daughter bragged about it out to the high school, t-hat her father was going to fire Mrs. Vogel because she couldn't do her job.

I went in, did my job and ignored all the resentment. I liked my job, I had four small children to raise alone. Regardless; how they felt, I liked working with them, I felt eventually their attitudes would chan-ge. It never changed for the men, and a f-ew prejudice people in this small community.

I always wanted to be a mail carrier ever since I was a small child, when I saw our mail carrier, Bob Kreisal step up the side of our porch on 312 S Seventh ST to d-eliver the mail. (this was the house I was born in). I did marry a mail carrier and I did become a mail carrier, and an Officer-

in-Charge of the Morral OH Post Office. My dad always wanted me to become a nurse, even to his dying words, "Mary Ann, I always wanted you to be a nurse." I told him, I know dad, but I never wanted to be a nurse." Our local theatre owner, who helped get Roy Roger's started in the movies, wanted to star me in a Roy Roger's movie when I was very young, I was too scared, and didn't want that either. I got to know Roy Rogers well and visited with him when he came to Upper Sandusky frequently. My mother always wanted me to be a lady and sit and knit and crochet. I didn't want that either, I was a Tomboy, liked to climb trees, swing by my heels, run, play hardball, football, ice skate, roller skate, swim, ride horses, and would do anything my neighbors would ask me to do, run errands, clean their house, mow their lawns, anything. They were good to me too. They loved me, I still love them even though they are gone now.

I never shirked my work at the post office either. I loved my job. I spent my anual leave to attend seminars to learn more about my job, but the men didn't. The Postmasters would still send the men for training instead of me. I would have to get my training on my own. I was the first one from our office that applied for Officer-in-charge, and I was Officer-in-Charge and this upset the men, because they did not like to see me get ahead. The Postal Service does not have the records I have to show what has gone on all these years against the first woman employed in the Upper Sandusky Post Office. I would like my day in court to set the records straight.

V.

CONCLUSION

I filed a Motion for Reconsideration as soon as soon as it was humanly possible for me to do. No one would intentionally sacrifice a loved one to get a Motion filed on time. I surely do not believe they would be expected to. There was a crisis in my family that I had to meet, and I met it. There should be some kind of consideration shown under the circumstances of this case for an employee that has given her best to the U S Postal Service for over 18 years and is now trying to defend her case the best she knows how.

Respectfully submitted,

Mary A Vogel Pro-Se
351 W Finley ST
P O Box 349
Upper Sandusky OH 43351-0349
Phone (419) 294-2170

DATED: July 10th 1991

KAREN A. O'BRIEN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
MARCH 31, 1994

## APPENDIX


U S COURT OF APPEALS, SIXTH CIRCUIT — A

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MARY A VOGEL, Pro-Se

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No. 90-4052

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | |
|---|---|
| MARY A. VOGEL, | FILED |
| Petitioner-Appellant, | APR 12 1991 |
| | LEONARD GREEN, CLERK |
| v. | |
| | ORDER |
| ANTHONY FRANK, Postmaster General, | NOT RECOMMENDED FOR FULL-TEXT PUBLICATION |
| Defendant-Appellee. | |

BEFORE: RYAN and SUHRHEINRICH, Circuit Judges, and Zatkoff, District Judge.*

Mary A. Vogel a pro se citizen, appeals the District Court's order dismissing her age, sex and handicap discrimination action filed pursuant to 42 U.S.C § 2000e-16 and 29 U.S.C. § § 663(a) and 791. The case has been referred to a panel of the court Pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. 34(a).

In May 1986, Vogel was separated from her job as a letter carrier in the Upper Sandusky(Ohio) Post Office on grounds that she was physically unable to perform her duties. Vogel had been employed by the Postal Service since July 15, 1967. Subsequently, she filed a complaint with the EEOC alleging that her separation constituted discrimination on the basis of her sex, her age(55) and her physical

handicaps (osteoporosis and leg pain). Shortly thereafter, on April 21, 1987, the EEOC issued its final agency decision which concluded that Vogel had not been the subject of discrimination. That decision advised Vogel of her right to file a civil action in the district court within thirty days of receipt of the decision. On May 20, 1987, Vogel who was represented by counsel, filed her initial complaint in the district court. Thereafter, Vogel filed an amended complaint on April 19, 1988, naming the Postmaster General as the proper defendant. The amended complaint, however, was voluntarily dismissed without prejudice on December 27, 1988, Vogel filed the instant complaint, proceeding pro se.

After a review, the district court granted defendant's motion to dismiss, finding that it lacked jurisdiction to hear the cases because the complaint was barred by the applicable thirty day statute of limitations set forth in 42 U.S.C. § 2000-16(c). Vogel has filed a timely appeal. On appeal, she asserts that the limitations period had been equitably tolled by operation of Ohio Rev.Code § 2305.19, the state's savings statute.

Upon review, we conclude that the district court lacked subject matter jurisdiction to consider Vogel's complaint because it was filed beyond the applicable statute of limitations period. See42U.S.C.A. § 2000e-16(c) (West 1981). Moreover, neither equitable tolling nor the state savings statute renders Vogel's complaint timely. See Irwin v. Veterans Admi-

nistration, 111 S. Ct. 453, 457 (1900), and Davis v. Smith's Transfer, Inc., 841 F2d 139, 140(6th Cir. 1988), respectively.

Accordingly, the district court's judgment is affirmed for the reasons stated in the district court's memorandum and order filed October 18, 1990. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

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*The Honorable Lawrence P. Zatkpff, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

RECEIVED
May 1 1991
LEONARD GREEN, CLERK

No. 90-4052

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
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| MARY A VOGEL, | ) | |
| | ) | |
| Petitioner-Appellant | ) | |
| | ) | MOTION FOR |
| v. | ) | |
| | ) | RECONSIDERATION |
| ANTHONY FRANK | ) | |
| Postmaster General | ) | |
| | ) | |
| Defendant-Appellee | ) | |

Mary A Vogel received an Order, April 15, 1991 from the United States Court of Appeals for the Sixth Circuit, before Ryan and Suhrheinrich, Circuit Judges, and Zatkoff, District Judge, unanimously agreeing that oral argument was not needed upon examination of the record and briefs. Accordingly, the district court's judgment is affirmed for the reason stated in the district court's memorandum and order filed October 18, 1990. There was no consideration shown on Vogel's brief, (See Exhibit A as incorporated herein by reference)

It is true, that on May 9, 1986, Vogel was separated from her job as Senior letter carrier in the Upper Sandusky, Ohio Post Office on grounds that she was physically unable to perform her duties as a letter earrier, with over 18 years service since July 15, 1967, as a letter carrier, however; Vogel served as an Officer-in-charge, (Postmaster) of the Morral, Ohio Post Office for three months, from February 28, 1985 through to May 29, 1985. There were other jobs

Vogel was able to do, but was not accomodated.

It is not true that, subsequently, Vogel filed a complaint with the EEOC. Vogel filed a complaint with the EEO, and received a final agency decision from the U S Postal Service, on April 21, 1987, which concluded that Vogel had not been the subject of discrimination. Vogel then filed a civil action in the district court within thirty days of receipt of the decision.

It is true that on May 20, 1987, Vogel was represented by counsel, filed her initial complaint in the district court. Thereafter, Vogel filed an amended complaint, however was voluntarily dismissed without prejudice on December 27, 1988, to be refiled in the Spring. There was no consideration shown to my brief of the circumstances of the case being dismissed of which Vogel had no control, that it was up to the attorney's involved, of which both sides agreed that they were not prepared to move forward, because the discovery time was used up primarially trying to keep the case out of court. May 19, 1989, Vogel paid her attorney $750.00 to refile the case back into Federal Court, instead; the attorney abanded his cases, disappeared and was later disbarred. I received notice of this the last part of June, 1989, and tried to resolve the Complaint out of Court, since my attorney told me on the day the Deposition was taken on December 6, 1988, that the Defendant Attorney's were sympathetic to my case and there was talk of some kind of settlement. When this failed

Vogel then refiled her complaint in Federal District Court, December 20, 1989.

May 13, 1988, Vogel had filed a Reprisal Complaint against the Upper Sandusky Postmaster, which is now in the investigative stage.

Vogel desires to combine this EEO Complaint with the Reprisal Complaint according to 29 CFR, Section 1613.261 and 1613.262 which rose out of the same basis, according to 29 CFR Section 1613.251 Joint Processing and Consolidation of Complaint Sub Section A, two or more complaints with similar allegations may be approved with written permission to the EEOC, at their discretion.

Vogel concludes that since this is an Ongoing Act of Discrimination even before my employment (See enclosed Exhibit C as incorporated herin by reference) and continued even after my employment ended, that there should be some kind of consideration shown under the circumstances of this case.

Respectfully submitted,

04-30-91

Mary A Vogel, Pro-SE Date
for Mary A Vogel,
Petitioner-Appellant

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case number: 90-4052

Case Name: Vogel vs. Frank

District Court No. 89-07703

PRO SE APPELLANT'S BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary. You need not limit your brief soley to this form, but you should be certain that the document you file contains answers to the questions below. If you are asking for specific relief such as the appointment of counsel, the provision of transcript at government expense, or leave to proceed without prepayment of filing fees, please make that request at the conclusion of the brief. The court prefers short and direct statements. Within 28 days you should return your completed brief to:

The Office of the Clerk
United States Court of Appeals, Sixth Circuit
538 U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

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(1) Did the District Court fail to consider important grounds for relief? Yes if so, what grounds?
At the time the Depositions were taken on 12-06-88, Attorney Carolyn L Davis and Attorney Thomas Karol were both sympathetic to my case, there was a discussion about some kind of Settlement, then Carolyn flew back to Philadelphia PA. This was before the Case was Dismissed Without Prejudice. None of the Attorneys were prepared to go forward with the case. Postmaster Shoup's deposition was being scheduled for another date and had not been taken yet.

(2) Did the District Court incorrectly decide the facts? Yes If so, what facts?

Carolyn Davis stated there was no Discrimination in my case that I might have thought I was mistreated but I really wasn't. Carolyn was the Judge and the Jury. I had asked for a Trial by Jury. The Transcript of the Deposition was never given to me to look over and correct like Carolyn had promised me I would have the time and opportunity of doing. There were no opportunities to make Discoveries because Carolyn Davis used the Time to try to keep the case out of Court. This is an On Going Act of Discrimination which relates back to the Original Successful 1972 Complaint, which started before I was even employed, which did not leave up even after I was removed. I have complied with all statuatory and regulatory requirements in bringing my case into Federal Court. The Age Discrimination in Employment Act in itself sets forth a Statute of Limitations, you would have within 180 days or 300 days of the discriminary act to file a complaint, then a federal lawsuit must be brought within 3 years if the action was a Willful Violation of the ADEA. This action was timely filed 05-20-87, voluntarily dismissed without prejudice 12-27-88, timely refiled pursuant to Ohio Revised Code 2305-19 Saving Statute.

(3) Do you think the District Court applied the wrong law? Yes If so, what law do you want applied?

Law was not justly applied in my case, when the case

was allowed to be improperly dismissed without prejudice, without my best interest and am asking for it to be admitted again so I may have my day in court. I have complied with all statuatory and regulatory requirements for the bringing of my complaint. I complied with the minimum requirements of 29 CFR part 1613.214 in timely bringing a complaint to an appropriate EEO Counselor. 05-13-88, I filed a Letter of Complaint with the U S Postal Service regarding Ongoing Discrimination and Reprisal which is in the Investigative Stage.

(4) Do you feel that there are any other reasons why the District Court's judgment was wrong? Yes If so what are they?

My former Attorney proved to the Court that my Complaint was Timely filed. I Timely Refiled it after my Attorney Dismissed the Case Without Prejudice to be later Refiled. The Postal Service failed to comply with 29 CFR 1613.704 required that Agency to accommodate limitations or disability. Because of age, toll of job, not capable of handling job as a mail carrier. Put me in a position sorting mail or selling stamps.

(5) What action do you want the Court to take in this case?

To give me my chance to have my day in court, to set the record straight, and to be made whole.

(6) Do you think that this Court should hear oral argument in this case? Yes If so, why do you think so?

10-18-90 I received a decision by the U S Federal D-

istrict Court. I have asked for a Jury Verdict. I want to be there and present my case Trial by Jury.

(7) Please state if you are requesting leave to proceed without prepayment of filing fees, appointment of counsel, or transcript at government expenses.

No, I have paid my filing fees. I will proceed Pro-Se

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the 21 day of December, 1990.

_____

Signature (Notary not required)

UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT
FACT SHEET FOR TITLE VII APPEALS

6th cir. R. 20 requires that counsel for the appellant and for the appellee file a one page fact sheet in all Title VII appeals. The fact sheet should be the same size as the pages in the brief. It should be placed in the briefs of the parties immediately following the table of contents and preceding the statement of issues presented for review. Use this form, 6CA-56.

Case Name and number 90-4052
Vogel vs. Frank

District Court No. 897703

Person reporting Mary A Vogel, Pro-Se

1. Date EEOC complaint filed N/A
2. Was any compromise reached by the state civil rirights agency? N/A
3. Date EEOC complaint filed N/A
4. Date present action filed May 20, 1987
5. Have all filings been timely? Yes If not, are any "tolling" arguments available? If so, describe: I have complied with all statuatory and regulatory requirements for bringing of my complaint I complied with the minimum requirements of 29 CFR part 1613.214 in timely bringing a complaint to an appropriate EEO Counselor. U S Postal Service failed to comply with 29 CFR 1613.704, required that agency accommodate limitations or disability. Because of age - toll of job - not capable of handling job as a mail carrier. Did not put me in a less

strnuous and demanding job sorting mail or selling stamps. Final Agency Decision received 04-21-87 - Complaint filed in Federal District Court 05-20-87 - Suit improperly named the U S Postal Service instead of Postmaster General - Proposed Rule Change of Professor Byse was relied upon last paragraph Rule 15(c) "An amendment naming the Postmaster General relates back if, on or prior to May 21, 1987, the Plaintiff commenced service pursuant to Rule 4 by mailing summons and a copy of the complaint to the U S Attorney or the Attorney General of the United States" - Court ruled favorably 04-20-88 - Depositions 12-06-88 - Pre-trial 12-19-88 - Court date set 01-03-89 - Dismissed Without Prejudice 12-27-88 - timely refiled pursuant to Ohio Revised Code 2305-19 Saving Statuate 12-20-89. 05-13-88 a letter of complaint was filed with the U S Postal Service regarding Ongoing Discrimination and Reprisal which is in the investigative stage.

6. Nature of claims of discrimination and date(s) of occurrence: Sex, Age, and Physical Handicap - March 19, 1986 was given a Letter of Separation Disability and on April 21, 1986 was given a Letter of Removal, effective 05-09-86 - EEO Complaint filed 10-14-86- Final Agency Decision 04-21-87 03-27-87 Arbitration - Artibration Decision 05-07-87 Terminated - Plaintiff filed complaint in Federal District Court 05-20-87.
7. Disposition below: JUDGMENT IN A CIVIL CASE: Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or hea-

rd and a decision has been rendered. IT IS ORDERED AND ADJUDGED, that defendant's motion to dismiss is hereby granted. Case dismissed. John W Potter, United states District Judge - October 18, 1990

IN THE UNITED STATES DISCRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Mary Vogel,

v. Case No. C 87-7354

United States Postal Service

TRIAL ORDER

Scheduling conference held; it is hereby ORDERED:

1. Jury trial set for 1/3/89, commencing at 9:00 A.M.
2. Final pretrial set for 12/19/88, at 2:00 P.M. Trial counsel, parties, and persons with authority to settle to attend final pre-trial in person. Further pretrial to be set at request of any party.
3. Discovery to be completed not later than twelve weeks, and motions to be filed not later than eight weeks prior to trial. Counsel may mutually consent to extension of time for discovery provided that such extension does not interfere with dates previously ordered by the Court.
4. The following are to be prepared, exchanged, and filed one week prior to trial:
   a. Joint concise statement describing the case in an impartial, easily understood manner which may be read to the Jury prior to voir dire;
   b. Witness and exhibit lists (with parties having marked all proposed exhibits, plaintiff with numbers, defendant with letters);
   c. In jury cases, proposed jury instructions rela-



"Exhibit B"

ting to the elements of the parties' causes of action and defenses;

d. In nonjury cases, proposed findings of fact and conclusions of law.

5. If any party expects to introduce videotape or deposition testimony, such party shall comply with the procedures set forth in General Order No. 88-1 of this Division, available from the Clerk.

6. Additional Orders: _____

_____

_____

Attorney for Plaintiff: William Moore

Attorney for Defendant: Tom Karol, Carolyn Davis

So ordered.

John W Potter
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Mary Vogel,

vs. Case No. C 87-7354

United States Postal Service

TRIAL ORDER

Scheduling coference held; it is hereby ORDERED:

1. Jury trial set for_____, commencing at_____.
   Jury impanelment_____, commencing at_____.
2. Final pretrial set for_____, at_____.

Trial counsel, parties and persons with authority to settle to attend final pretrial in person. Further pretrial to be set at request of any party.

3. Discovery to be completed not later than twelve weeks, and motions to be filed not later than eight weeks prior to trial. Counsel may mutually consent to extension of time for discovery provided that such extension does not interfere with dates previously ordered by the Court.

4. The following are to be prepared, exchanged and filed one week prior to trial:

   a. Joint concise statement describing the case in an impartial, easily understood manner which may be read to the jury prior to voir dire;

   b. Witness and exhibit lists. Parties to have marked all proposed exhibits, plaintiff using

letters;

c. In jury cases, proposed jury instructions relating to the elements of the parties' causes of action and defenses;

d. In nonjury cases, proposed findings of fact and conclusions of law.

5. If any party expects to introduce videotape or deposition testimony, such party shall comply with the procedures set forth in General Order No. 88-1 of this division, available from the Clerk.

6. Additional Orders: upon plaintiff's motion to dismiss and the government's opposition, it is order that this case is dismissed without prejudice.

I hereby certify that this instrument is a true and correct copy of the original on file in my office attest: James S. Gallas, Clerk U.S. District Court Northern Dist. of Ohio

Attorney for Plaintiff: William Moore

Attorney for Defendant: Tom Karol, Carolyn Davis

John W Potter

UNITED STATES CIVIL SERVICE COMMISSION

CHICAGO REGION
Main Post Office Bldg., Chicago, Ill. 60607

Mrs. Mary Ann Vogel
351 W. Finley Street
Upper Sandusky, Ohio

Date: December 14, 1966

File: CHPS:CEH:mg

R E F E R R A L

SUBJECT: Postal employment in Upper Sandusky

The item identified in the subject has been sent to the office shown below because it appears to be a matter for their consideration. Please direct any future correspondence about the matter to the address below.

Additional remarks:

FORWARDED FOR ACTION TO:

Executive Secretary
Board of U.S. Civil Service Examiners
Post Office Department
Room 4240, Main Post Office
Cleveland, Ohio 44113

(Send original to correspondent and carbon copy with communication to appropriate office.)CSC Form 4173
March 1965

"Exhibit C"

PERPETUAL NOVENA

1. For a successful operation of my little Schnauzer puppy called Schottzie, a speeding recovery in the hospital, and be able to be a healthy dog.

2. Good results in the resolution of an EEO Complaint and Reprisal, that it will be heard in it's entirity from the First Successful EEO Complaint back in 1972.

3. Good results in the settlement of my Mother and Brother's Estates, including a lawsuit involving attorney fees and other expenses caused the estate to be paid out of the pocket by Kathlyn A Thiel.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
538 U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988
LEONARD GREEN
Clerk
TELEPHONE
(513)684-2953
FTS 684-2953

May 1, 1991

Mary A. Vogel
351 W. Finley Street
P.O. Box 349
Upper Sandusky, OH 43351-0349

RE: 90-4052
Vogel vs. Frank
District Court No. 89-07703

Dear Mrs. Vogel:

On May 1, 1991 this office received your motion for reconsideration.

Pursuant to Rule 40 (a) of the Federal Rules of Appellate Procedure, petitions for reconsideration must be filed within 14 (fouteeen) days after entry of the judgment. The judgment in the instant appeal was entered on April 12, 1991. Accordingly, your petition is being returned to you, unfiled, as untimely submitted.

Very truly yours,
Leonard Green, Clerk

Barbara Burns
Case Supervisor

BB/vf

-xx-

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT
538 U.S. Post Office & Courthouse Building
Cincinnati, Ohio 4502-3988

LEONARD GREEN
Clerk

TELEPHONE
(513)684-2953
FTS 684-2953

May 14, 1991

James S. Gallas
Northern District of Ohio at Toledo
108 U.S. Courthouse
1716 Spielbusch Avenue
Toledo, OH 43624

RE: 90-4052
Vogel vs. Frank
District Court No. 89-07703

Dear Clerk:

Enclosed please find:

The mandate issued in the above-styled case.

The CERTIFIED RECORD RETURNED to lower co-court at the end of appellate proceedings. (90-4052). Volumes included: 1 Pl; 0 Tr; ) 0 Dep; 0 Ex.

Please acknowledge receipt of the certified rec-on the attached copy of this letter and return it to this office.

_____
Name and Title of Authorized Agent for
the District Court or Government Agency

Very truly yours,
Leonard Green, Clerk

cc:
James A. Friedman
Verne K. Armstrong
Mary A. Vogel

Teresa Bertke
Deputy Clerk

No. 90-4052

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | |
|---|---|
| MARY A VOGEL<br><br>Petitioner-Appellant<br><br>v.<br><br>ANTHONY FRANK<br>Postmaster General<br><br>Defendant-Appellee | MOTION TO PERMIT<br><br>REHEARING |

Mary A Vogel received an Order entered on April 12, 1991, affirming the U S Federal District Court's Decision, from the U S Court of Appeals for the Sixth Circuit on April 15, 1991.

Vogel sent a Motion for Reconsideration to the Court of Appeals April 30, 1991. On May 3, 1991, Vogel received from the Court of Appeals that pursuant to Rule 40 (a) of the Federal Rules of Appellate Procedure, petitions of Reconsideration must be filed within 14 (fourteen days after entry of the judgment). Accordingly, your petition is

being returned unfiled, as untimely submited.

Vogel called the court and explained to the clerk that she was not aware of the 14 day filing, also; there was a family crisis that I could not think of anything else, since her four month old Schnauzer puppy, Schottzie became sick Thursday evening, March 29, 1991, when we woke up Easter Sunday morning, March 31, 1991, we had to call our veterinarian, DR Robert E Cope, who saw Schottzie immediately and said she got into poison. We called DR Cope later in the evening, if we hadn't, Schottzie would have been dead by Monday morning. I took care of Schottzie 24 hours around the clock took her to the veterinarian for shots every day, finally when we couldn't stop the vomiting and bowel movements continued to be black, we took Schottzie to the Ohio State Veterinary Hospital in Columbus OH, where Schottzie was put in the intensive care unit, listed as very, very critical. Schottzie

was given a blood transfusion and many blood tests were run. Schottzie was operated on April 24, 1991 and remained in the intensive care unit as critical. Stones were taken from Schottzie's bladder, her intestines were inflammed, her liver was inflammed and the blood was not flowing through the liver like it should because of a congenital disorder, because a shunt was bypassing the liver instead of the blood going through the liver as it should. Schottzie was scheduled for surgery Friday, May 3, 1991, but because of an emergency, Schottzie was rescheduled for surgery on Monday.

A radioactive white blood cell test was given which showed trouble in her lungs. It is a complicated case, it cannot be determined just exactly if it is a toxin, bacteria, virus, or just exactly what is causing this trouble for this very critically ill puppy, but it is tearing me apart, I cannot keep my mind on anything but her, because I love her

so much.

I put a Perpetual Novena into ST Jude early Friday morning, May 3, 1991. I had put a Novena into ST Anne, (Mother of the Blessed Mother) through ST Jude, through the mail slot at the Marion OH Post Office before I went down to take my Civil Service Exam. The day the Novena ended, the mailman put in my mail slot the results of the Civil Service Exam, which was a 94.1, which included a 10 point Veterans Preference.

I want you to understand that I have done the best I could under the circumstance my Federal Court Case is very important to me and my Schottzie is very important to me. Please take this into consideration and permit my Motion for Reconsideration to be heard.

Respectfully Submitted,

05-04-91

Mary A Vogel, Pro-SE Date
for Petitioner-Appellant
Mary A Vogel

MARY A VOGEL
351 W Finley ST
Upper Sandusky OH 43351-1243
Phone (419) 294-2170

CERTIFIED #
P743 140 487

May 13, 1988

BARBARA PETERSON
EEO COUNSELOR'S OFFICE
Main Post Office
850 Twin River's DR RM 434
Columbus OH 43216-9998
Phone (614) 469-4367

DEAR Ms PETERSON:

I ask that an EEO Complaint be taken against District Postmaster Gene Scott, Betty Gallick, Main Post Office, 850 Twin River's DR, Columbus OH 43216-9998.

Postmaster Paul W Shoup, 122 W Wyandot AV. Upper Sandusky OH 43351-9998, and there may be others.

I am being discriminated against because -

1. I am a woman
2. I am 57 years old.
3. I have physical limitations, in which by the way, I have suffered because of my work.
4. My most recent complaint is as a resu-

lt of Postmaster Shoup submitting false information regarding my application for disability retirement.

5. Further - relates back to my original EEO Complaint.

My attorney notified Postmaster Scott, April 27, 1988 (enclosed you will find a copy). I feel that not only am I being discriminated against but, this is an act of reprisal for my filing a formal EEO Complaint.

I request that you take immediate action on this complaint and advise me in writing of receipt of this letter. I have enclosed for your convenience a self addressed stamped post card, which I ask you to sign, date, and return to me. Thank you.

Sincerely yours,

Mary Ann Vogel
Active Employee
No Pay Status
302-24-8668

CC: ATTY Richard M Wallar ESQ